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Forum

A free exchange of ideas on the issues of the day

CIA bill: the need is now...

By EDWARD P. BOLAND

In the past several years the intelligence activities of the U.S. government have been exposed to the light of public scrutiny to a degree never before witnessed in this or any other country.

Presidential commissions, congressional committees, judicial decisions, investigative reporters have all, at one time or another, given us a detailed glimpse of the day-to-day practices of our intelligence agencies.

To an unfortunate degree, some of these practices were found wanting — wanting in temrs of their compatibility with American values, morals, laws, and constitutional precepts.

We have now, I believe, taken the painful but necessary steps to bring a halt to such practices and to insure that they do not occur again.

All of this has not taken place without rancor, divisiveness, and heated debate among our people and within the government.

Significantly, however, both sides of the debate have always proceeded on the unquestioned assumption that it is both necessary and proper for this country to possess a clandestine intelligence service.

An effective clandestine service is especially important to American interests in these troubled times. As recent events demonstrate, it is as vital to our security to possess some insight into the thought processes of seemingly obsure religious figures as it is to know the location of Soviet missile launchers. Technical systems which are purchased, quite properly, at significant cost to determine the latter are of little use in gleaning the former. In such areas, the nation must rely on our clandestine service.

The operating heart of any such service is the use of undercover agents and officers overseas to collect intelligence information. Obviously, if the names of these people are spread upon the public record, their usefulness is ended and the effectiveness of the clandestine service is diminished.

In the past few years, that is precisely what has been occuring. A small number of Americans, including some former intelligence agency employees, have been engaged in a systematic effort to destroy the ability of our intelligence agencies to collect information secretly by disclosing the names of overseas undercover intelligence agents. Not only are legitimate intelligence activities thwarted, but the careers of dedicated intelligence officers are disrupted, service morale is lowered, the taxpayer's money is wasted, and — perhaps most important — lives are directly placed in danger.

In my opinion and, I think, in the opinion of the overwhelming majority of the American people, unauthorized disclosure of the names of undercover intelligence agents is a pernicious act that serves no useful informing function whatsoever. It does not alert us to abuses; it does not further civil liberties; it does not bring clarity to issues of national policy; it does not enlighten public debate; and it does not contribute one iota to the goal of an educated and informed electorate.

Whatever the motives of those engaged in such activity, the only result is the complete disruption of our legitimate intelligence collection programs — programs that bear the unprimature of the Congress, the President, and the American people. Such a result benefits no one but our adversaries.

Later this month legislation to combat such disclosures will be debated on the floor of the House of Representatives. Under consideration will be H.R. 5615. The Intelligence Identities Protection Act, a bill which has been reported favorably, after several days of hearings, by the House Permanent Select Committee on Intelligence, which I chair, and the House Judiciary Committee.

This bill would make it a crime to disclose any information that identifies covert United States intelligence agents. Different penalties and elements of proof are established depending on whether the defendant was a present or former government employee who acquired his information from authorized access to classified information, or whether the defendant derived the information disclosed from non-classified sources.

The publishers of the "COVER ACTION INFORMATION BULLETIN" and similar groups, contend that they fall into the latter category. They claim they can discover the identities of our undercover agents by diligently studying previously published diplomatic lists and biographical registers and comparing and collating the information contained therein with other publicly available information. Having had no access to classified information, they claim it is unconstitutional to prohibit their disclosures.

In recent days, many newspapers, while denouncing such articles, have also stated that the proposed legislation violates the First Amendment. I respectifully disagree. H.R. 5615 is a carefully crafted limited solution to an urgent or grave problem. It responds to an evil the government clearly has a right to prevent; it is narrow and precise in its scope so as to give notice of its proscriptions, and it

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does not sweep within its purview any activities protected by the First Amendment.

The Intelligence Committee has been very sensitive to constitutional claims. We recognize the First Amendment implications. We have spent many hours crafting a bill that responds to the disclosure problem without sacrificing constitutional rights.

Contrary to recent suggestions, we have not acted in an hysteric response to the early July attacks on U.S. Embassy personnel in Jamaica. Rather, we, as well as the Senate Intelligence Committee, have spent over a year-and-a-half dealing with the issue. The initial version of H.R. 5615, which also authorized prosecution of those with no access to classified information, was introduced almost a year ago, in October of 1979.

What we have done since then is to limit the sweep of the provision in order to meet First Amendment objections. It does not inadvertently cover normal reporting; it does not cover those investigating and disclosing intelligence agency wrongdoing; nor does it cover a group's efforts to determine if any of its members are informants. Those who suggest the contrary have not read the bill. To successfully prosecute an individual who discloses the identities of undercover intelligence agents but who has had no access to classified information, H.R. 5615 requires the government to prove each of the following beyond a reasonable doubt:

- That the disclosure was totentional;
- That the covert relationship of the agent to the United States was properly classified information and that the defendant knew it was classified:
- That the defendant knew that the government was taking affirmative measures to conceal the agent's relationship to the United States:
- That the disclosure was made as part of an overall effort to identify and expose covert agents for the purpose of impairing or impeding the foreign intelligence activities of the United States:
- That the particular disclosure was intended to impair or impede the foreign intelligence activities of the United States.

A bill so narrowly focues threatens no one's First Amendment rights; at the same time it is the minimum necessary response to the obnoxious activities of those who make it a practice to ferret out and then expose our undercover officers and agents for the purpose of destroying our intelligence collection capabilities.

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. . . It's too much, too soon

By FLOYD ABRAMS

As Congress moves speedily towards adjournment, one piece of legislation appears on more and more congressional "must" lists of bills to be passed before adjournment. That it is also legislation of the most unlikely constitutionality and that it carries with it high risks of depriving the public of critical information about governmental wrong-doing, has slowed but not stopped the push towards passage.

On its face, the legislation is inoffensive and, in part, even attractive. Designed to protect CIA agens from exposure by revelations of their names by faithless — and disgraceful — former colleagues such as Philip Agee, one part of the bill would make illegal such revelations. That part of the legislation is both constitutional and desirable: the naming of names of our agents by their present or former colleagues is probably illegal already. If it isn't, it should be and there is surely no constitutional bar to making it so.

But the legislation Congress is considering and seems likely to pass goes further. Much further. In the course of also making illegal the disclosure of agents' names by people outside the government, and who have no connection with it, it might allow the prosecution of the officials of an American university with an overseas branch which, upon learning that the CIA had secretly placed agents within its faculty, sought to determine who the agents were and to expose them.

It could allow the prosecution of a newspaper and its reporters who, upon learning of CIA participation in some Watergate of the 1980s, published a series of articles naming the agents who wrongfully — and illegally — participated in those activities.

And it would allow prosecution of individuals (whether or not they were jounalists) who exposed, over a period of time, illegal CIA conduct by named individuals within the United States, despite the fact that the information set forth was not even classified.

It is difficult to believe that this was the intended result of the legislative efforts of the CIA. I, for one, do not believe it. But it is the result that the current bills under consideration by both the Senate and House would permit.

The role of the Department of Justice in the development of the legislation is hardly reassuring. As recently as this June, an associate deputy attorney general urged upon the House Select Committee on Intelligence that only the disclosure of classified information should be made illegal since otherwise "a speaker's statement about covert activities could be punished, even though they are not based on access to classifed information, do not use inside methodology acquired by the speaker in government service and one unimbued with any special authority from former government service."

Yet in August, the Department of Justice — with barely a word of explanation, not to say apology — supported legislation which would make it illegal for persons with no connection to the government to disclose unclassifed information.

As for the CIA itself, while its efforts have been good faith ones to protect its — and our — egents abroad, it has demonstrated a marked insensitivity to the values embodied in the First Amendment. What defense, for example, can possibly be offered for the outrageous position of CIA Deputy Director Frank C. Carlucci before the Senate Judiciary Committee?

According to Carlucci befoe the Senate Judiciary Committee?

According to Carlucci, "nothing could be more subversive of our constitutional system than to permit a disgruntled minority of citizens freely to thwart the will of the majority." Read that line again. It comes closer to describing the "constitutional system" in, say, Czechoslovakia or Chile than here. In fact, it comes about as close to describing our system accurately as it would be to say that our system is one of majority rule and no minority rights.

Nothing, in fact, could be more subversive of our constitutional system of government than to permit a disgruntled majority of citizens freely to thwart the rights of expression of a minority. Even a most disagreeable one. The CIA really ought to polish its vocabulary. Or to change its thinking.

At bottom, the breadth of the legislation Congress now has before it is so sweeping as to imperil much that no one — including, I suppose, the CIA itself — intended to cover. But so compelling and so seductive is the call of national security that common sense is too often left behind.

Perhaps we could all ponder again the words of Judge Murray Gurfein in the Pentagon Papers case. "The security of the Nation," he wrote, "is not at the ramparts alone. Security also lies in the value of our free institutions."

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